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April 20, 2004

Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 200551

RE: Docket No. R-1180

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Dear Board of Governors:

Thank you for providing us with the opportunity to comment on the request related to Burden Reduction Recommendations for Consumer Protection Lending-Related Rules as published in the Federal Register on January 21, 2004.

Our institution is a $28+ billion-dollar bank holding company with banking offices located in Arizona, California, Colorado, Idaho, Nevada, New Mexico, Utah and Washington. Our affiliated banks engage in financial activities that are directly affected by lending-related consumer protection rules that may be changed as a result of this comment request.

We appreciate the efforts the agencies are taking to reduce regulatory burden and we wish to provide comments as follows:

HMDA

1. Government Monitoring Information – Ethnicity and Race –Lenders are required to request information about an applicant's ethnicity, (e.g. Hispanic/Latino) and race (American Indian/Alaska Native, Asian, Black/African American, Native Hawaiian/Other Pacific Islander, or White). These Ethnicity and Race categories were established to mirror definitions established by the Office of Management and Budget, but are often confusing to applicants who insist their ethnicity is actually a race. For example, many Hispanic applicants insist their race is "Hispanic", even though that choice is not an option. As a result, many applicants choose to not provide the information in telephone or internet applications, and loan officers must "guess" when taking face-to-face applications. Neither situation provides meaningful data.

   We suggest that the OMB revisit the definitions, consider eliminating the Ethnicity category, and reinstate Hispanic/Latino as a race category.

2. Refinance Definition – Lenders are required to report, as a refinance, all loans secured by a dwelling replaced by another dwelling secured loan.

   As a result of this broad definition, business purpose loans that meet the definition of a refinance are HMDA reportable even when the stated purpose of the loan does not involve a dwelling (such as a loan request to purchase equipment for a business). We believe that the requirement to report these transactions is contrary to the intent of HMDA.

   We suggest that business loans that do not meet the HMDA purpose test be exempted from HMDA reporting requirements.

3. Home Improvement Definition – Lenders are required to report an application as Home Improvement if any portion of the refinanced loan is used for improvements. In the Mortgage area, most refinance transactions are primarily a refinance of a purchase money loan. The cash out that is used for home improvements is not the primary portion of the loan.

   We suggest that a loan should be reported as a home improvement loan only if home improvement is the primary purpose of the loan.

4. Rate Spread Reporting – First lien one-time close construction-permanent loans must include the calculation of the rate spread if the spread is equal to or exceeds 3 percentage points. Regulation Z allows this type of loan to be disclosed as separate transactions, one for the construction loan phase and one for the permanent loan phase. Regulation Z also allows the points and fees to be distributed between the two disclosures and further allows a lender to assign all of the points and fees to either disclosure.

   If a lender assigns all of the points and fees to the permanent loan phase, the APR often exceeds the 3% threshold and the rate spread must then be reported. The reporting of a rate spread on a one-time close construction-permanent loan disclosed as outlined opens the lender up for unnecessary regulatory scrutiny, public criticism and potential charges of predatory lending.

   An exception should be added to the HMDA rate spread reporting requirements to eliminate the reporting of a rate spread on a one-time close construction-permanent loan when the APR on the permanent loan phase was calculated by including fees and points for the construction phase.

5. Data Integrity – The various regulatory agencies use data integrity standards that impose a significant burden on lenders that may not be justified. Although we understand the importance of accurate data, we believe the current line error standard of 5% is burdensome and expensive to maintain. HMDA reporting now requires the reporting of up to 25 fields of data for each loan application. If only one of the 25 fields is incorrect, the whole line is considered in error for purposes of the 5% line error standard. A lender that reports 3,000 applications on their LAR that includes 75,000 fields of data, reaches the 5% standard if there is just one error on each of 150 of the 3,000 applications reported.

   When determining whether or not a lender's LAR meets accuracy requirements, we recommend that the line error standard be eliminated, that an accuracy standard of 5% per applied to key column errors, and that an accuracy standard of 1% be applied to total data elements.

Regulation B, Regulation Z and the Real Estate Settlement Procedures Act (RESPA) – Application Disclosure Requirements

1. Adjustable Rate Mortgage (ARM), Home Equity Credit Line (HECL) and Servicing Transfer (STD) Disclosure Requirements - Lenders are required to provide ARM and HECL disclosures at the time an application is provided to a consumer. Lenders are also required to provide an STD at the time of a face-to-face interview.

   These requirements are inconsistent with other requirements that allow lenders three business days to provide required disclosures (such as the Good Faith Estimate and the initial Truth in Lending disclosure). As a result of these inconsistencies, lenders often must maintain two sets of procedures to ensure compliance with initial disclosure requirements. This is burdensome and expensive.

   We suggest that the provisions of these sections be amended to allow a choice in providing application-related disclosures - provide either at the time of application or within three business days of receipt of an application.

2. Application Disclosure Requirements - Application disclosures should be simplified and revised to make annual updates unnecessary. For lenders with several programs, updating and distributing disclosures is time consuming and expensive.

   We suggest the following:

   - Remove the requirement for a 15-year history on HECL disclosures.
   - Establish a sample "payment" disclosure that would incorporate minimum and maximum payments on a representative ARM loan or HECL based on the minimum and maximum rates.
   - Review other specific terms of the HECL disclosure requirements to identify any requirements that can be summarized or shortened in order to provide a simpler, easier to read, and more meaningful disclosure.

3. Servicing Transfer Disclosure Statement - While we agree that the servicing transfer disclosure statement may be necessary for residential real estate loans for which servicing may be transferred multiple times, it is an unnecessary disclosure burden for consumer loans secured by residential real estate. Many lenders that originate such products do not sell servicing on these loan types and do not intend to do so.

   We suggest that consumer loans secured by residential real estate be exempted from the requirement to provide a STD if the lender can show that they service these loans and do not sell them. The exemption would not be available if the lender changed its policy and began to sell consumer loan servicing rights.

   For covered loans, we suggest that the disclosure requirements be reviewed to identify any terms that can be summarized or shortened in order to provide a simpler disclosure and to make annual updates unnecessary.

4. Initial ARM Disclosure - Exception for Denied Applications - Unlike other application disclosures, there is no stated exception for ARM disclosures and brochures when an application is denied within three business days.

   We suggest that this exception be incorporated into the Regulation or Commentary.

In addition, we suggest that the exception be expanded for all application disclosures when applications have been withdrawn (or a conditional offer of credit not accepted) by applicants within three business days.

5. Initial ARM Disclosure and HECL Disclosure - ARM disclosures are required when an applicant's principal dwelling will secure a loan; HECL disclosures are required when any dwelling owned by an applicant will secure a loan.

   The HECL disclosure requirement outlined in Regulation Z (and explained further in the Commentary) is inconsistent with Section 127A of the Truth in Lending Act. Section 127A specifically refers to open-end consumer credit plans secured by a consumer's principal dwelling.

   We suggest that Regulation Z and its commentary be amended to require initial HECL disclosures only when an applicant's principal dwelling will secure a loan.

6. Notice of Right to Receive Appraisal – Lenders are provided two options for providing appraisals to consumers: either routinely provide the appraisals, or provide applicants with a notice of their right to receive a copy of the appraisal. For lenders that elect to provide appraisals upon request, the required notice must be in a form that the consumer can keep.

   There is no stated exception to the requirement to provide an appraisal notice when a loan application is denied prior to an appraisal being obtained on the property. Providing such a notice serves no purpose other than to potentially lead applicants to the erroneous belief that an appraisal was obtained.

   The regulation or commentary should be expanded to include a specific exception from appraisal notice requirements when a loan application is denied or withdrawn within three business days and no appraisal has been completed.

   We also recommend that an exception be made for business purpose loans where the lender obtains a lien on a dwelling out of an "abundance of caution" and no appraisal has been completed.

7. Good Faith Estimate and HUD-1/HUD-1A Settlement Statements - Many lenders offer "fee free" loan products to consumers, whereby all third party fees are paid by the lender. Providing a Good Faith Estimate (and a HUD-1A Settlement Statement), reflecting the charges the applicant does not have to pay, is an unnecessary requirement that increases costs and serves no useful purpose.

   We suggest that fees absorbed by the lender on "fee free" and "no cost" consumer loans be exempted from disclosure on the Good Faith Estimate and HUD-1/A Settlement Statement.

8. Good Faith Estimate – Format and Content – In its response to questions from the Massachusetts Bankers Association, HUD opined that charges for any required item previously obtained by a borrower must be listed as a "POC" on the Good Faith Estimate. We believe that HUD's opinion is incorrect and is inconsistent with 24 CFR 3500.7(a), which requires a good faith estimate of charges the borrower is likely to incur in connection with the settlement. Costs incurred prior to requesting a loan (e.g. appraisals and/or insurance premiums) are not charges incurred in connection with the loan settlement. Researching

these costs to disclose them is an unnecessary exercise that does nothing to meet the intent of RESPA, which is to provide a borrower with information on the cost of obtaining a specific loan.

We recommend that HUD reverse its opinion on this and other issues relating to previously obtained and gratuitous services.

9. Good Faith Estimate – Format and Content – Lenders are required to disclose all charges the borrower is likely to incur in connection with the settlement of a loan. Included in that disclosure is the estimated cost of hazard insurance premiums. Given that many factors, including the applicant's credit score, can cause significant variances in premiums for two similarly valued homes, we suggest inclusion of a standardized statement such as "this estimate does not include premiums for hazard insurance that will be required as a condition of your loan. You should consult your insurance agent to obtain a quote."

10. Good Faith Estimate -Required Service Providers – Lenders are required to identify service providers and the nature of any business relationship.

    This disclosure is unnecessary and provides little, if any, benefit to the consumer. Typically, the service providers are entities with which the consumer would have no contact in connection with the loan, such as credit reporting agencies or flood determination companies, where the lenders obtain those services directly.

    We suggest that the Required Service Provider disclosure requirement be rescinded.

11. Affiliated Business Arrangement Disclosure – Lenders are allowed to refer consumers to an affiliated entity for settlement services provided an Affiliated Business Arrangement Disclosure is provided on a separate piece of paper.

    We suggest these requirements be amended to remove the separate piece of paper requirement. The disclosure should be allowed to be included on an existing disclosure, so long as it is no less conspicuous than other information on the disclosure and it is clearly visible to the consumer (such as bold face type, enclosed in a text box, etc.).

12. Electronically Provided Disclosures – Unlike the Federal Reserve, the Department of Housing and Urban Development (HUD) has not incorporated provisions for lenders to provide electronic disclosures to applicants.

    We suggest that (HUD) incorporate provisions and parameters to enable lenders to provide electronic disclosures to applicants.

Regulation B

1. Collection of Monitoring Information - The monitoring information collection rules under Regulation B should be amended to conform to the monitoring information collection rules under Regulation C.

Regulation Z

1. Right to Rescind - Regulation Z provides consumers with a right of rescission in certain transactions secured by a consumer's principal dwelling. The required delay in disbursing funds serves little purpose for borrowers who initiate such transactions.

The vast majority of consumers do not rescind transactions within three business days of settlement; rather, the attempt seems to be made by borrowers whose loans are in default, when their attorneys often correspond with lenders in an attempt to exercise a three-year rescission in order to avoid foreclosure.

Alternatively, savvy borrowers who have paid fees in connection with a loan know that they may not be entitled to receive a refund of those fees if they cancel a transaction before settlement. Rather, they wait until after settlement to rescind, leaving the lender responsible for paying settlement charges that might not have been incurred had the borrower cancelled in a more timely manner.

We recommend that rescission rules be relaxed for transactions initiated by consumers when a minimum number of days have elapsed between receipt of an application and the settlement date, and the consumers have been given the right to cancel a transaction within that time frame. A notice could accompany other application disclosures, such as the good faith estimate or HECL application disclosure, outlining the applicant's right to cancel a transaction within (number to be determined) days of application. Fees for 3rd party services already performed, such as appraisal, credit report, flood determinations, etc., should not be refundable.

In the alternative, consumers could be provided with an option to elect to waive their right to rescind. Consumers get very angry if they cannot have their funds immediately and proving a bona fide financial emergency is too subjective. Our only recourse is to allow a consumer to take out a side loan for 30 days, which proves to be costly to the consumer and risky for the lender.

2. Effects of Rescission - When a consumer rescinds a transaction, a creditor must refund all monies paid (even to third parties) by the borrower in connection with the transaction.

   While not specifically discussed in the regulation, the intent is for lenders to reimburse consumers for "nonrefundable" costs such as credit and title reports, and lender ordered services such as title insurance (on which the lender can subsequently obtain a refund). We further believe that the regulation never intended for lenders to reimburse consumers for refundable services that they (consumers) obtained (such as property and flood insurance) in connection with a loan and can obtain refunds themselves. Not excluding certain fees results in consumers enjoying additional coverage paid by the lender or receiving a double refund of premiums when they cancel or reduce insurance coverage.

   We recommend that the commentary be expanded to exclude insurance premiums paid by the borrower from the requirement. Borrowers have the ability to cancel or reduce such coverage and receive a refund.

3. Owner-Occupied Rental Property – A loan to acquire owner-occupied rental property is considered business purpose if the property contains more than two housing units. A loan to improve or maintain owner-occupied rental property must contain more than four housing units to be considered business purpose. The commentary should be revised to provide a consistent definition of owner-occupied rental property, regardless of the purpose.

4. Exemption for Certain Advertisement – Inconsistencies exist between advertisements for credit products under Regulation Z and deposit products under Regulation DD. Having different rules for different products increases the potential for errors and omissions in advertisements, resulting in expensive rewrites and wasted time.

   Regulation Z should be amended to include exemptions similar to those outlined in Regulation DD.

5. Triggering Terms and Required Disclosures (Closed-end Credit) – When advertising closed-end credit products, triggering terms include number of payments (or period of repayment), the amount of a finance charge, amount of payments, etc. When triggering terms are set forth in an advertisement, the advertisement must include the amount or percentage of down payment (on a credit sale), repayment terms, and the APR.

   a. Some information in an advertisement can be misleading and additional disclosures are warranted. However, we do not feel that advertising the term of a loan misleads consumers. When advertising long term mortgage loan products, it is not practical to require additional disclosures. Market rates on such products change daily (sometimes more frequently) and APRs may be based other factors (such as private mortgage insurance, risk rating based on credit history, etc.) thereby making accurate disclosures impossible.

   b. There in little value to the consumer in requiring the disclosure of repayment terms in an advertisement. The disclosures are not often very conspicuous, and the consumer can easily overlook the information.

   The number of payments or period of repayment should be removed as a triggering term and the repayment terms be removed as a required disclosure.

6. Triggering Terms and Required Disclosures (Open-end Credit) – Some of the additional disclosure requirements for open-end credit products do not provide any value to the consumer and the volume of information that is required results in footnotes that detract from the initial intent of the advertisement.

   Disclosure requirements should be simplified to include as applicable:

   a. The APR (if variable, the effective date and the fact that it is variable)

   b. A statement that certain fees will apply to open and maintain an account, a balloon payment will occur on home equity lines of credit (if a monthly payment is disclosed) and to ask for additional information

   c. If an advertisement states an initial rate that is not based on an index and margin: the length of time the initial rate will apply, a reasonably current APR, and the effective date of the APR

   d. A customer should contact a tax advisor regarding the deductibility of interest (if “tax deductible” is disclosed in an ad)

7. Advertising Requirements for Home Equity Lines of Credit – Amend the advertising requirements to mirror those for closed-end loans. The advertising requirements for home equity loans are concise. The preliminary disclosures provided contain more detail and satisfy requirements for assisting consumers to shop for credit. Quite often our advertisements are so “disclosure” heavy that we have difficulty in our radio ads, not to mention the mouse print we have to use for print ads.

8. Use of Annual Percentage Rates in Oral Disclosures – When quoting interest rates in response to a consumer’s inquiry, lenders are required to state only the APR, although the simple interest rate may also be stated. The purpose of the disclosure requirement is to enable consumers to “credit shop” and apply for the most favorable rate. However, in an environment where the pricing of consumer loans is based on risk factors such as credit score, consumers are increasingly learning that they cannot obtain quotes until they apply for credit.

   We believe it is not meaningful to consumers to disclose APRs in oral rate inquiries. We further believe that consumers are interested in the rate that will be charged, as evidenced by the frustration that loan officers experience in trying to explain to consumers why APRs are higher than note rates. We believe that providing a range of interest rates and the fees associated with such loans would provide better information to consumers while rate shopping.

9. Advertising Rules – Advertising rules under both open-end and closed-end should be amended to include a mailing consisting of several separate flyers or pieces of promotional material in a single envelope as a single multiple-page advertisement under sections 226.16(c) and 226.24(d). To have to duplicate disclosure on every piece of paper included in a mailing is unnecessary.

10. Clarification of Finance Charges – The commentary should be clarified to provide a standard listing of fees that are always considered finance charges.

   Many investors in the secondary market require that a settlement/closing fee be included in the calculation of the finance charge and refuse to purchase loans that do not meet this requirement. There is a specific exception outlined in the commentary to 226.4(c)(7)2 that states that this fee is not a finance charge (provided the specified circumstances are met) – yet they refuse to accept this exception.

   The same situation exists with document review fees which are also specifically exempted under the commentary to 226.4(c)(7)1 – some investors refuse to purchase a loan that contains a document review fee unless the fee has been included in the finance charge.

   Another fee that is subject to interpretation is the fee charged by an appraiser to do a recertification of value after the completion of construction for a one-time close construction and permanent loan. Although both of these loans close at the same time, the permanent financing is contingent upon the completion of construction. Therefore it can be argued that the recertification fee is tied to the initial credit decision and is not a fee that is incurred during the term of the loan. Specific guidance is needed concerning whether or not this type of fee meets the test for exclusion under 226.4(c)(7)3 as a fee imposed in connection with the initial decision to grant credit.

11. Credit Card Provisions – Credit card provisions under 226.12(a) ad 226.12 (b)(5) regarding business credit should be removed. Regulation Z is a consumer protection law and this single piece of the regulation is confusing and unnecessary.

Flood

1. Reliance on previous flood determinations – Regulations implementing the Flood Disaster Protection Act require lenders to use the Standard Flood Hazard Determination (SFHD) when making, increasing, renewing or extending loans secured by improved property. In the book *Mandatory Purchase of Flood Insurance Guidelines* published by FEMA, a flood determination can be reused for increasing, extending, renewing or purchasing existing loans if certain conditions exist, i.e. determination is less than seven years old, no change in the flood map, initially recorded on a SFHD form.

   Lenders often obtain "life of loan" coverage from flood determination vendors when making the initial determinations in connection with improved real estate loans. The purpose of life of loan coverage is for vendors to notify lenders whenever changes in flood maps result in changes in the flood status of loans within their portfolios. Absent notification, lenders could reasonably rely on the fact that no change to flood status has occurred when renewing, increasing, or extending loans. As such, we believe that no action should be required by lenders when extending, renewing, or increasing a loan for which life of loan coverage has been obtained, regardless of the age of the determination or whether flood maps had changed.

   We recommend that the ability to rely on previous flood determinations be expanded to include initial determinations with life-of-loan coverage (if the initial determination was recorded on a SFHD). Additionally, we request reliance on previous flood determinations be made part of the regulation.

2. Loan Extensions – Lenders may extend loan payment due dates as an accommodation to a borrower or offer holiday promotions to extend December or January payments for borrowers who have remained current on their loans during the previous year. Extending a loan payment results in the extension of the maturity date of a loan by one month.

   There is no definition of "extending" within the regulation, and there is little guidance on what constitutes an extension. We feel that one-month extensions, although they defer the maturity date of a loan, do not fall under the intent of FEMA's regulations.

   We suggest that an exception for short term extensions (such as those under six months) be added to the regulation.

3. Junior Lienholders – Remove the requirement that junior lienholders are responsible for ensuring coverage on all outstanding liens by allowing enough coverage to protect the lender in junior position against risk. We have had situations where the 1st lienholder disagrees that the property is in a flood zone and does not require coverage; our vendor issued a flood certification showing the property is in a standard flood hazard area. The consumer is forced to either obtain insurance for both liens to satisfy our flood requirement or not get the loan. This is also an issue when the first lienholder is not subject to flood rules – such as finance companies and privately held first mortgagees since neither of these lenders are subject to flood insurance requirements.

Privacy

1. Annual Privacy Notice – Lenders are required to send annual notices of their privacy policy to consumers. This is in addition to the notice provided at the time a relationship commences.

   The annual notice requirement is costly, a waste of resources, and an unnecessary burden to lenders (and other financial service providers). Consumers are deluged with annual privacy notices from multiple financial services companies and we suspect that most go unread. Despite attempts to simplify privacy notices, they continue to be lengthy, overly detailed, and serve little purpose for consumers.

   The annual notice requirement should be eliminated. Instead, institutions should be required to send privacy notice updates only when there are significant changes to their privacy policies. The notices should be required to clearly and conspicuously state the old and new terms of the policy and reiterate to consumers how to opt out of information sharing.

Debt Cancellation

1. Oral Disclosures – When soliciting debt cancellation products in connection with a loan, National banks are required to provide a detailed oral disclosure, followed up (or accompanied by, in a face-to-face solicitation) with a detailed written disclosure. The oral disclosure requirements include the following statements:

   - The fact that the consumer's purchase is optional;
   - The fact that whether or not the consumer purchases debt cancellation will not affect the application for credit or the terms of any existing agreement the consumer has with the bank;
   - The fact that the bank will give the consumer additional information before the consumer is required to pay for debt cancellation;
   - The fact that there are eligibility requirements, conditions and exclusions that could prevent the consumer from receiving benefits under debt cancellation; and
   - The fact that the consumer should carefully read the contract for a full explanation of terms of the debt cancellation.

   The oral disclosure is too lengthy, duplicates much of the information in the written disclosure, and provides little benefit to a consumer. We believe that disclosing the fact that debt cancellation is optional, the cost of the debt cancellation (currently not a requirement in an oral disclosure), and the fact that additional disclosures will be provided contains sufficient information for an initial solicitation.

   Oral disclosure requirements under OCC regulations should be revised to provide a shorter, more concise statement, followed up with a detailed written disclosure.

Homeownership Counseling Notice

1. Notification upon delinquency – Lenders are required to provide notification to a homeowner when a loan secured by the homeowner's principal (1-4 family) dwelling becomes delinquent up to 45 days. Because the requirement to provide the notice is not dependent upon the purpose of the loan, there is no stated exception for commercial purpose loans. We have interpreted the regulation to cover all past due loans where a homeowner's primary dwelling secures a loan, even if the homeowner and the borrower are different persons.

In business and commercial lending, lenders may take a security interest in a primary dwelling to strengthen the credit out of an abundance of caution. Overall, the dwelling makes up a small portion of the collateral, most of which may be comprised of business assets, and the existence of a dwelling as collateral might not be identifiable in automated loan tracking systems. As such, covered loans must be manually identified in order to comply with the notification requirements, or the notice must be sent to all delinquent commercial borrowers.

The regulation should be revised to provide clarification regarding covered loan types. We further suggest that business purpose loans should be exempted from the notification requirements.

FACT Act

1. Credit Score Disclosure – Under the FACT Act, lenders will be required to provide disclosures to consumers relating to credit scores for applications of certain loan types. This requirement mirrors the requirements set forth in statutes enacted by the State of California.

   While we do not oppose the requirement to provide the disclosure, we have received complaints from current California residents about the disclosure's content. Due to the wording in the credit score disclosure, applicants think that their application for credit has been denied. As a result, employees have been required to explain to worried consumers that the disclosures are merely informational and are not communicating a credit decision.

   New regulations implementing this section of the FACT Act and the model disclosure should be drafted in a manner that clearly communicates to consumers that the disclosure is for informational purposes only and not a communication of a credit decision. The disclosure should explain that factors contributing to a credit score may appear negative but contribute to the score and do not necessarily mean an application has been denied.

Again, thank you for providing us with an opportunity to comment on ways to reduce regulatory burden. If you have any questions concerning our comments, please contact me at 702.657.3528.

Sincerely,

Kathy Gately
Corporate Credit Compliance Manager